

A Glimmer of Hope for All?

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The emergence of the Covid-19 pandemic causes serious risks for human beings and, therefore, challenges the human rights system and the capacity of governments to adopt quick and adequate measures. This new reality necessitates reflecting on the conditions of and the possibilities for such measures. In view of the difficulties encountered in the implementation of immunization, this contribution defends the recognition of the right to a fair distribution of vaccines as a new human right. Taking Brazil as a case study, it deals with the necessary policies and actions to effectively promote immunization, as well as to support the strengthening of global health governance.

The Lack of Adequate Global Sanitary Governance, the Right to Health and the Right to a Fair Distribution of Vaccines

Covid-19 rapidly spreads throughout the world causing serious impacts everywhere. The pandemic imposes a reduction in the sociopolitical distance among countries, more precisely requiring an approximation of the moral and human perspectives to fulfill human rights duties. Human rights are designed to protect human beings from serious risks that may affect dignity, freedom, and equality. Especially those who are most vulnerable, such as cultural, religious, and ethnic minorities, victims of structural [inequality](#) and [injustice](#), urgently need measures that ensure their rights. Therefore, the advent of a global health crisis requires consistent and strong global health governance. The failure of an adequate global health governance system had already led to the lack of an efficient health response to the previous epidemics, such as Ebola and H1N1. These epidemics had caused a wide spread of diseases and high death rates, especially among the most vulnerable.

In the context of extreme inequality and structural injustice that already spread around the world, the Covid-19 pandemic further pressured the basic need to protect human beings and minorities from two different angles: The necessary measures to face the pandemic require, on the one hand, preventing further contagion. On the other hand, the sanitary crisis and the high rate of deceased affect the economy, education, social relations, and physical and mental health. The Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and most contemporary constitutions ([about 136 constitutions establish some discipline on health, albeit in different ways](#)) set the relevance of the right to health. As will be seen, the right to fair distribution of vaccines is a specification of the right to health, especially in the context of pandemics.

The stage of vaccination around the world has shown that developed countries have a more accentuated rate of immunization. In contrast, developing countries fall short of the necessary infrastructure. This reflects the inequalities and structural injustices in the health system: on January 26, 2021, just one nation among the 29 poorest had [started](#) vaccinating against Covid-19. Projections [indicate](#) that poor countries

would only achieve immunization in 2024. This challenge is not limited to a specific area or country. By being a local and, at the very same time, a global issue, the Covid-19 pandemic can only be addressed by convergent actions and policies. Art. 2 of the ICESCR requires States to use all available resources and adopt appropriate measures to ensure the right to health, thereby merging the duties of assistance and cooperation.

Luigi Ferrajoli (p. 73–74) [supports](#) the view that vaccines should be considered global common goods and that every effort must be made to provide access outside free market conditions. In this same vein, the costs of not realizing social rights, like health care, are immeasurable and intolerable, causing severe repercussions on human lives that exceed even the costs for fulfilment. The right to vaccination involves the fair distribution of vaccines produced worldwide, prioritizing risk groups based on scientific and social criteria, in which minorities must be considered. Given the political, health, social, and economic contexts, the human right to a fair distribution of vaccines must be recognized based on the fundamental principles of cooperation, precaution, and based on the right to health. The human right to health encompasses rights to access to health care systems, to medication and, among others, to vaccination. The right to vaccination presupposes, in a context of global pandemic, the fair distribution of vaccines and, as such, depends on a global sanitary governance.

Vaccination in Brazil: Barriers and Prospects

These general considerations shall now be assessed against the case study of Brazil. Brazil's health crisis has continuously worsened: it is currently the second country with the highest number of [infected](#) and [deceased](#). This is due to the federal government's stance of denying the severity of Covid-19. The federal government commonly questions the recommended scientific sanitary measures, such as wearing masks, social distancing, and suspension of some economic activities. Additionally, the government [discredits](#) the safety and efficacy of vaccines, inflating anti-vaccine movements. The result is a national disarticulation of policies and measures (see [here](#)). Thus, the government's omissions concerning the containment of the virus' spread impose atypical federalism of confrontation and are contrary to the adopted constitutional model of cooperative federalism.

Addressing the lack of an efficient global health governance, the right to a fair distribution of vaccines requires overcoming national regulatory barriers. For example, the Brazilian health authority (Anvisa) required that [phase 3 of vaccine testing](#) be carried out in Brazil. Thus, according to [Medida Provisória nº 1.026/2021](#), Anvisa authorized the import and distribution of vaccines that were registered at only some sanitary agencies, namely European, British, American, Chinese, or Japanese agencies. As a result, there was no adequate and efficient planning for the purchase and distribution of vaccines. This caused [continuous interruptions](#) in the immunization of priority groups in many cities, making [Brazil](#) the 19th country in the number of doses administered per 100 inhabitants.

Consequently, state governments and other institutions appealed to the Federal Supreme Court (STF). In important lawsuits, such as [ADPF 770](#),

[ACO 3452](#), [ADI 6661](#), [ACO 3477](#), and [ACO 3482](#) (see [STF Covid-19 Case Law Compilation](#)), they claimed for the unconstitutionality of the above-mentioned regulatory measures restricting the acquisition and distribution of vaccines. Moreover, they demanded the imposition of the following measures: for the federal government to facilitate the purchase and distribution of vaccines, or at least import and directly distribute to the state governments even if not registered by Anvisa. If a medicine or vaccine is not registered by Anvisa, its distribution is prohibited. In these lawsuits, the state governments claimed that as long as efficiency and safety are recognized by other regulatory agencies beyond the ones established by Medida Provisória 1.026/2021 (like Russian and Argentine regulatory agencies, for example), the vaccine should be imported and distributed without rely on the federal government. The complaints referred, directly or indirectly, to the right to a fair distribution of vaccines as stemming from the right to health. They also highlighted the importance of scientific knowledge as a basis for health decisions and cooperation among countries.

Along with recent rulings by the STF (like the es at [ADPF 672](#) and [ADI 6341](#)), these lawsuits, the coordinated measures adopted by state governments and the mobilization of the National Congress, were essential for the federal government to react. Anvisa started to accept phase 3 of vaccine testing carried out in other countries. Besides, on March 10, 2021, the National Congress passed [Law No. 14124](#) by exceptional and temporary procedure. This legal act accepted the import, acquisition, and distribution of vaccines approved by a broader range of foreign health authorities, including directly by state governments, if demonstrated a) a non-compliance by the federal government with the National Vaccination Plan or b) the inability to provide sufficient vaccination coverage. In these conditions, it is now possible to have quick access to vaccines proved to be safe and effective.

Conclusion

It is time to recognize a new and fundamental human right to a fair distribution of vaccines. The obligation to promote and fulfill the right to health in the context of epidemics and pandemics is based on this new fundamental human right.

The right to a fair distribution of vaccines, in a perspective of development of global health governance, requires a) recognizing the possibility of vaccines approved for use according to basic guidelines of a uniform protocol, whose criteria of safety and effectiveness have been attested by the scientific community, exempting approval of national health agencies; b) setting up a global fund for the distribution of vaccines, which may go through the improvement of the [COVAX Consortium](#); c) establishing an obligation for distributing vaccines to developing countries to a greater extent than to rich countries, since the latter have lower demand on the health care systems and less risk of collapse; d) defining the criteria to prioritizing risk groups, in which minorities must be included; e) determining that laboratories establish more favorable and differentiated purchasing conditions for vaccines designated to developing countries, according to the [Guiding Principles on Business and Human Rights](#) and f) institutionalizing compulsory licensing of vaccines, according to [TRIPS](#) or even beyond TRIPS, for developing countries.

If in Brazil one can see some perspective to faster vaccination in a few months after problems of intergovernmental incoordination have arisen, it is uncertain whether this will happen for other developing countries and, above all, for the poorest countries in the world. The feasibility of the proposed measures, aiming at the implementation of the new human right to a fair distribution of vaccines, requires the effective development of adequate global health governance and the establishment of a cooperative network based on ground principles of scientific and humanistic development. It is a difficult task, but we cannot postpone it any longer.

